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6
7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 GERALD ARMSTRONG,

Case No. CV-N-97-670 ECR (RAM)

11 Plaintiff,

12 vs.

PLAINTIFF'S OPPOSITION TO THE
RULE 12(b) MOTIONS TO DISMISS

13 DAVID MISCAVIGE and CATHY
14 NORMAN, individuals; CHURCH OF
SCIENTOLOGY INTERNATIONAL, a
15 California corporation; the
RELIGIOUS TECHNOLOGY CENTER, a
16 California corporation; the
SEA ORGANIZATION, a California
17 based unincorporated entity;
and the CHURCH OF SCIENTOLOGY
18 OF TEXAS, a Texas corporation,

[Defendants Cathy Norman and
Church of Scientology, Texas
and
Church of Scientology
International and Religious
Technology Center]

19 Defendants.
20

21 Plaintiff Gerald Armstrong opposes the Rule 12(b) Motion to
22 Dismiss (#12) submitted jointly by defendant Church of Scientology
23 of Texas ("CST") and of defendant Cathy Norman ("Norman") as well
24 as the identical-in-substance Rule 12(b) Motions to Dismiss (#10
25 and #9) filed separately by the defendant the Church of
26 Scientology International ("CSI") and the defendant Religious
27 Technology Center ("RTC") upon the grounds and for the reasons set
28 out hereinafter.

1 The CST and Norman motions to dismiss are identical or alike
2 in language, the incorporated supporting points and authorities
3 are substantively the same in view of the adoption by each of the
4 other codefendants, e.g. the RTC Motion (#9, 2: 4-6) of the CSI
5 Statement of facts and points I, III and IV of the CSI Memorandum
6 of Points and Authorities (accompanying # 10). [Note: in view of
7 the adoption by codefendants of the CSI points I, II, and IV this
8 Opposition paper's references to ("defendant's") or to
9 ("defendants' ") arguments are to the CSI eleven page points.]

10 Each of the defendants, in turn, asserts as grounds for
11 dismissal under Fed.R.Civ.P. Rule 12(b): lack of subject matter
12 jurisdiction; lack of personal jurisdiction; improper venue; and
13 "because Plaintiff is a fugitive from justice."¹

14

15 1 At the outset, plaintiff denies that he is now, or that he has
16 been at any time "a fugitive from justice" in any Scientology-
17 related proceedings as is so frequently alleged by legal counsel
18 for each of the moving defendants CSI and RTC (e.g. Motion(s) to
19 Dismiss, page 2:8-9) ("plaintiff should be precluded from
20 litigating this action because he is a fugitive from justice.")
21 Further, counsel is informed that the assertion by defendant CSI
(CSI P & A, page 3:12-13) is inaccurate in averring that "the
22 California Court of Appeals dismissed Armstrong's appeal from the
23 order of permanent injunction precisely on the ground that, as a
24 fugitive from justice, Armstrong may not invoke its processes
25 (Wilson Decl. ¶ 5 and Exh. C)." Three points appear to need
reference here (emphasis added):

22 First, Title 18 USCS § 921 (15) reads in its entirety:

23 The term "fugitive from justice" means any
24 person who has fled from any State to avoid
25 prosecution for a crime or to avoid giving
 testimony in any criminal proceeding.

26 Second, the "Bench Warrant" executed in Case No. 15229, CSI vs.
27 Gerald Armstrong, et al, by Judge Gary Thomas in the
28 Superior Court of State of California for the County of Marin

1 This Opposition of plaintiff is made and based upon all of
2 the records, pleadings, and motion papers on file in these
3 proceedings as well as upon the annexed Memorandum of Points and
4 Authorities, upon the Declaration of Gerald Armstrong and the
5 Declaration of George Abbott, and upon such further evidence and
6 argument as may be presented at any hearing upon the pending
7 Motion and Opposition.

8 Dated the 7th day of June, 1998.

9 GEORGE W. ABBOTT, CHARTERED

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11 By 
12 George W. Abbott, Esq.
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20 on August 7, 1997 (4/19/98 Wilson Decl., Exhibit E, and presumably
21 prepared by Attorney Wilson himself) reads (emphasis added):

22 "BENCH WARRANT
(Civil)"

23 On the foregoing plaintiff claims it is evident that the
24 defendants' repeated claims that plaintiff is a "fugitive from
25 justice" are inaccurate, are untrue, are at the very least
26 arguably premature and unsupportable. Additionally, no legal
27 authority has been found sanctioning the relief defendants demand.
28

1 PLAINIFF'S MEMORANDUM OF POINTS AND AUTHORITIES
2 IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS
3

4 For points and authorities in support of this Opposition of
5 to each defendants' Motion(s) to Dismiss Complaint plaintiff
6 Gerald Armstrong submits the matter set out following.

7 I. Adequacy of diversity allegation

8 Plaintiff in his Complaint (# 1, ¶ 5, page 2) alleges that he
9 was "a resident of Nevada at the time (November 24, 1997) of
10 filing this complaint." Defendants assert (e.g. CSI Motion to
11 Dismiss, page 1:26-28 thru page 2:1) "Plaintiff failed to allege
12 adequately the basis for diversity jurisdiction...alleged merely
13 that he was

14 "a resident of Nevada at the time of filing this
15 complaint. . .and an allegation of residency alone is
16 insufficient to establish the citizenship required to
invoke diversity jurisdiction. . .plaintiff cannot cure
the defect by repleading. . ."

17 Here, defendants overlook the Ninth Circuit guideline that "A
18 party making a claim need satisfy only the notice pleading
19 standard." Crull v. GEM Insurance Co. 58 F.3d 1386 (9th Cir.
20 1995) ("The pleading need not identify any particular legal theory
21 under which recovery is sought.").

22 II. Question of Nevada residence, applicable law

23 This federal district court in Lugot v. Harris, 499 Fed. Supp.
24 1118 at 1120 had occasion to "cite Aldabe v. Aldabe, 84 Nev. 392,
25 396, 441 P.2d 691, 694 (1968) as pronouncing the correct law with
26 respect to domicile in Nevada." In Aldabe the Court, at 84 Nev.
27

1 394 stated (emphasis added in decision's text):

2 "Residence is synonymous with domicile and it is consonant
3 with the many decisions of our court that the fact of pres-
4 ence together with intention comprise bona fide residence for
(divorce) jurisdiction (citations, Nevada Supreme Court 1913-
1960, omitted)."

5 And see *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir, 1987); *Safeco*
6 *Ins. Co. of America v. Mirszak*, 662 F. Supp. 1156-57 (D.Nev. 1987)
7 Plaintiff Gerald Armstrong, to have in one place the documents
8 deemed relevant and material to issues in these proceedings, has
9 submitted the annexed document styled "Declaration of Gerald
10 Armstrong" consisting of twenty-seven pages of text and of
11 Exhibits "A" through "M".

12 III. The claim of Armstrong residence: facts

13 It is the position of plaintiff that Gerald Armstrong has
14 more than fulfilled a prima facie showing of Nevada residence at
15 the time of filing the Complaint herein, and today, and that Mr.
16 Armstrong's actions and activities fully conform to and are
17 consistent with, the case holdings of this state, as well as with
18 applicable federal law.

19 Plaintiff has alleged under the penalty of perjury facts
20 supporting his claim to Nevada residency adequate to fulfill
21 subject matter diversity requirements (Declaration of Gerald
22 Armstrong, e. g. herein "Armstrong Decl.", ¶ 9, page 4:19-28 thru
23 page 5:1-2) (some paraphrasing):

24 "I have considered myself, and have legally been, a
25 resident of Nevada since November, 1997. I have never
26 since that time considered myself a resident of any
27 other state or province than Nevada...never stated to
anyone that I am not a resident. Have had a post office
box in Nevada since November 21, 1997, where I have

1 received mail...rented box for a year (receipt, Exhibit
2 B)...have a Nevada driver's license...none from any
3 other state...have work in Nevada...am actively engaged
4 in that work, keep my personal property in Nevada.)"

5 Mr. Armstrong (Armstrong Decl. of May 6, 1998 at pages 5-17, ¶¶ 10-
6 31) has also recited his version of facts that reflect "fair game"
7 tactics: plaintiff claims that the Church of Scientology
8 International (CSI) , and Religious Technology Center (RTC),
9 through attorney Wilson as well as through a CSI-RTC "plant" or
10 "operating agent" Sheila M. Werner have engaged in gross untruths
11 and deceptions in their respective declarations — prime, and
12 naked examples of Scientology's historic "fair game" doctrine
13 (sworn repeatedly by supreme Scientology leader Miscavige to have
14 been abandoned since 1981) — but very much in effect today as
15 the doctrine was defined by the deceased L. Ron Hubbard thus
16 (emphasis added):

17 "Fair game: (Any) "enemy of scientology" "May be
18 deprived of property or injured by any means by
19 any Scientologist without any discipline of the
20 Scientologist. May be tricked, sued, or lied to
21 OR DESTROYED. "

22 (Armstrong Decl. of May 6, 1998 page 2:1-4). The annexed May 5,
23 1998 declaration (¶ 10:3-8) also contains this recitation:

24 10. CSI and RTC support their false assertion that I
25 am not a resident of Nevada with a declaration by
26 Sheila M. Werner, who states that during a conversation
27 with her on April 5, 1998, I "told her that I had
28 recently been in Nevada but that [I] did not plan to
live there and was there only for legal matters."
(Werner Decl. p 2, para 9). This is completely false.

For plaintiff Armstrong's sworn account of what transpired
during Armstrong's conversations with Ms. Werner see Armstrong May
6, 1998 Declaration (¶¶ 10-20, pp 5-9.

1 IV. Where there are conflicting affidavits

2 In the circumstances of such conflicting affidavits, certain
3 specific guidelines have emerged in the Ninth Circuit [e.g. as in
4 Data Disc, Inc. v. Systems Tech. Assoc., Inc. 557 F.2d 1280,
5 1284-1285 (1977)], as well as in the Nevada Supreme Court [see
6 Trump v. Eighth Judicial Dist. Court, 109 Nev. 687, 857 P.2d 740
7 (1993), cited, Firouzabadi v. First Judicial Dist. Court, 110 Nev.
8 1348, at 1352, 885 P.2d 616 (1994)]. From notes to NRS 14.065,
9 Vol. I, Nevada Revised Statutes (Copyright 1995 by State of
10 Nevada), under "Commencement of Actions", page 730, at least three
11 guidelines (emphasis added) emerge, viz:

12 (a) General and specific personal jurisdiction

13 explained.

14 Personal jurisdiction may be general or specific.
15 General personal jurisdiction over defendants is
16 appropriate where defendant's activities in Nevada are
17 so substantial or continuous and systematic that
defendant may be deemed present in Nevada and hence
subject to suit over claims unrelated to its activities
in Nevada.

18 (Remaining text defining "specific personal jurisdiction only
19 where defendant purposefully avails itself of privilege of serving
20 market in Nevada or of enjoying protection of Nevada laws, and
21 cause of action arises from that purposeful contact with Nevada"
22 and citations omitted). [Note 1/: that the CSI, RTC, et al,
23 "scientology" admissions, claims, and indeed their boasts (or
24 threats) are conclusively demonstrated as "substantial",
25 "continuous", and "systematic" is startlingly clear from a plain
26 reading of two exhibits to the Armstrong Declaration.

1 Exhibit L, "What is Scientology?" includes inter alia these
2 declarations (applicable, of course to the scientology entities
3 said to be active in Nevada — (naming the three entities)):

4 "The system of ecclesiastical management used in
5 the Church was developed to individual care for the
6 large number of Scientology churches, missions and
7 groups which exist. . . However, to assist individual
8 churches, and (to) ensure the overall expansion of
9 Scientology THERE IS A MOTHER CHURCH FOR ALL SCIENTOLOGY
10 — the Church of Scientology International (CSI),
11 located in Los Angeles. . . Through CSI's ecclesiastical
12 management activities, individual Scientology churches
13 receive guidance in applying the "scriptures" ("quotes"
14 added) both technically and administratively. . . CSI
15 broadly plans and coordinates Scientology overall. .
16 .CSI provides specialized training programs for church
17 executives on the entirety of Scientology
18 administrative technology . . . CSI sees to the
19 distribution of Scientology scriptures. . . produces all
20 E-meters, religious training films, slide shows. . .
21 videos of Scientology. . . the recorded lectures of Mr.
22 Hubbard. . . translations of L. Ron Hubbard's books. . .
23 etc., etc."

24 And see particularly Armstrong Declaration on pages 23
25 and 24, paragraph 39 thru 41.

26 Exhibit M by photocopy, is a letter dated February 25, 1997
27 from CSI San Francisco attorney Andrew W. Wilson to Armstrong
28 Nevada attorney (undersigned in these points and authorities)
29 George W. Abbott. This letter capsulizes the essence of Gerald
30 Armstrong's total opposition to and disagreement with defendants'
31 unrestrainedly repeated and baseless CSI-RTC-Wilson et al
32 insistence that "Armstrong is a fugitive from justice" . . . is
33 "hiding out" in Canada (not just incidentally, Mr. Armstrong's

1 birth domicile), is a "fugitive from justice"²

2 (b) Burden of proof to be met by plaintiff in overcoming
3 challenge to jurisdiction.

4 If defendant challenges personal jurisdiction, plaintiff may
5 show jurisdiction in either of two distinct ways. (1) In more
6 frequently utilized process, trial court hears pretrial
7 jurisdictional motion based on affidavits, depositions and other
8 discovery materials. Plaintiff may make prima facie showing of
9 personal jurisdiction before trial and then prove jurisdiction by

10
11 ²the "justice" which Mr. Armstrong resists (and for which he
12 is awaiting the promised appearance of a Public Defender to
13 represent his interests in striking down the claimed "contempt"
charges procured by Attorney Wilson without service on Mr.
Armstrong of requisite to notice) is nakedly and unapologetically
asserted by Attorney Wilson in this (paraphrased) language:

14 "Mr. Abbott, you are ignorant of the effect
15 of the 'settlement agreement' (the "Agreement") entered
16 on December 8, 1986. It would behoove you to review the
17 orders of Judges Dufficy. . .Thomas. . .Sonigan before
18 advising Mr. Armstrong that "...he is free to
19 communicate orally, in writing or by any other legal
20 means available to him to fully correct" alleged lies
21 and distortions. The fact is that Mr. Armstrong is not
22 free to do that. Mr. Armstrong's sole remedy is to seek
appropriate relief for alleged defamatory statements.
The problem, of course, with that approach is that Mr.
Armstrong will never be able to prove defamation. I
have reviewed the documents which you allege are
defamatory and am unable to find any statement
concerning Mr. Armstrong, much less one which is
defamatory. Please enlighten me as to which statements
you contend are defamatory, and why you make that
contention."

23 Mr. Abbott, you have advised Mr. Armstrong that...
24 he is free to communicate, orally, in writing or by any
25 other means available to him to fully correct..."(any
26 and all) alleged lies and distortions " emanating from
the Miscavige-CSI-RTC- and legions of attorneys. The
fact is that Mr. Armstrong is not free to correct any
and all Miscavige-CSI-RTC-legions of attorneys- et al
lies and distortion."

1 preponderance of evidence at trial. Plaintiff must produce some
2 evidence in support of all facts necessary for finding personal
3 jurisdiction, and burden of proof never shifts to party
4 challenging jurisdiction. (2) Alternatively, trial court has
5 option of conducting full evidentiary hearing on issue of
6 personal jurisdiction before trial. Where full evidentiary
7 hearing is held plaintiff must prove personal jurisdiction by
8 preponderance of evidence or face dismissal of claim. (Citations
9 omitted).

10 (c) General requirements for obtaining jurisdiction over
11 nonresident defendant.

12 To obtain jurisdiction in Nevada over nonresident defendant,
13 plaintiff must show that requirements of NRS 14.065 have been
14 satisfied and that due process is not offended by exercise of
15 jurisdiction. Due process requires minimum contacts between
16 defendant and Nevada such that maintenance of suit does not offend
17 traditional notions of fair play and substantial justice.
18 Defendant must have sufficient contacts that he could reasonably
19 anticipate being haled into court in Nevada. In addition,
20 exercise of jurisdiction must be reasonable. (Case citations
21 omitted.)

22 V. Subject matter jurisdiction resides in this Court
23 pursuant to Title 28 USCA § 1332.

24 Plaintiff Gerald Armstrong is a resident of Nevada. Each of
25 the Defendants are residents of Texas or of California. The
26 requisite diversity exists.

1 VI. General personal jurisdiction over the defendants
2 Church of Scientology International and the Religious Technology
3 Center exists in this Court.

4 It is the firm position of plaintiff that general personal
5 jurisdiction over the moving defendants Church of Scientology
6 International and the Religious Technology Center exists in this
7 Court where, as here, defendants' activities in Nevada have been
8 and continue to be so substantial, so continuous, and so
9 systematic that the defendants and each of them may be deemed to
10 be present in Nevada and hence subject to suit over claims against
11 them, even including claims unrelated to their respective
12 activities in Nevada. NRS 14.065. Trump v. Eighth Judicial
13 District Court, 109 Nev. 687, at 699, 857 P.2d 740 (1993),
14 Firousabadi v. First Judicial Dist. Court, 110 Nev. 1348, at 1352,
15 885 P.2d 616 (1994).

16 The declarations of Plaintiff Armstrong establish the extent
17 of the Church of Scientology International's very large, total
18 presence and necessary activities flowing therefrom, activities
19 "so continuous, so sytematic that the defendants and each of them
20 may (and are) deemed to be present in Nevada and hence subject to
21 suit over claims against them, even including claims unrelated to
22 their respeeective activities in Nevada.

23 Without duplicating what is already of record, for support of
24 the foregoing see in the Armstrong Declaration of May 6, 1998, the
25 text beginning on page 17 in paragraph 32 at line 23 commencing
26 with :

1 32. CSI avers that "there is no basis for the
2 for the Court to assert personal jurisdiction over
Defendant CSI because there are no contacts . . .

3 continuing through line 21 in paragraph 41 on page 24.

4 VII. This federal district court obtains jurisdiction
5 over these moving defendants upon this plaintiff's showing herein.

6 Nevada's long-arm statute, found in NRS 14.065, recites in
7 pertinent part that:

8 14.065 Exercise of jurisdiction on any basis consistent with
9 state and federal constitutions; service of summons to confer
jurisdiction.

10 1. A court of this state may exercise jurisdiction
11 over a party to a civil action on any basis not inconsistent
with the constitution of this state or the Constitution of the
12 United States.

13 As shown supra, the long arm statute's requirements have been, or
14 even now are, in process of being satisfied and due process is not
15 offended by the exercise of such jurisdiction.

16 V. Each of these defendants by their own claims and
17 admissions regarding contacts in Nevada, has opened itself to
18 jurisdiction.

19 Each of these defendants — by the claims and admissions as to
20 the substantial, continuous, systematic, and purposeful contacts
21 with Nevada made by and attributable to them — have been such
22 that each could reasonably anticipate being haled into court in
23 Nevada.

24 Three entities (Church of Scientology of Nevada, Church of
25 Scientology, Creative Mission of Las Vegas, and Church of
26 Scientology Mission of Las Vegas) were all registered as
27 Scientology-related corporations with the Secretary of State of

1 Nevada during the events described in these Opposition submissions
2 (one of which, the latter) was listed as delinquent at the date of
3 this Opposition. Mary Abbott Decl.) In light of the holding on
4 November 13, 1997 of the Los Angeles Superior Court in Case No.
5 C332027, styled Lawrence Wollersheim v. Church of Scientology of
6 California, (Armstrong Decl., Exhibit J) by analogy must
7 constructively be deemed to be alter egos of CSI the new "mother
8 church" found by the Los Angeles Superior Court to be the
9 replacement for the Church of Scientology of California the former
10 "mother church".

11 Venue is appropriately laid in this United States District
12 Court (Northern Division) for the District of Nevada pursuant to
13 Title 28 USCA § 1391 (a) and pursuant to Local Rule 1002(b) (1-2).
14

15 IX. CONCLUSION. On the foregoing, upon all of the
16 pleadings and papers on file in these proceedings, and pursuant to
17 applicable law, the motions of each of the moving defendants —
18 Cathy Norman, the Church of Scientology of Texas, the Church of
19 Scientology International, and the Religious Technology — should
20 be denied.

21 ALTERNATIVELY. The Court may wish to defer ruling upon
22 any, or upon each of the collective codefendants' Rule 12(b)
23 challenges until after further materials are presented, after
24 discovery is conducted, or after evidence is received at trial.
25 Land v. Dollar, 330 U.S. 731, 67 S.Ct. 1009, 96 L.Ed. 1209 (1947);
26 St.Clair v. City of Chico, 880 F.2d 199 (9th Cir.), cert. denied,
27

1 493 U.S. 993, 113 S. Ct. 2417, 124 L.Ed.2d 539 (1989).

2 Dated the 8th day of June, 1998.

3 GEORGE W. ABBOTT, CHARTERED

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5 By George W. Abbott
6 George W. Abbott, Esq.
7 Attorney for plaintiff.
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9

10 Certificate of Service

11 I certify that I am an employee of George W. Abbott, and that
12 on June 9, 1998, I served defendant's counsel by delivery of two
13 copies of the within Plaintiff's Opposition to the Rule 12(b)
14 Motions to Dismiss, upon N. Patrick Flanagan, Esq., Hale, Lane,
15 Peek, Dennison, Howard, Anderson and Pearl, at 100 West Liberty
16 Street, 10th floor, Reno, Nevada 89501.

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18 Mary Abbott
19 Mary Abbott
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DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I am the plaintiff in this case. I have personal knowledge of the facts set forth in this declaration and could competently testify thereto if called as a witness. I am making this declaration in support of oppositions to a motion by defendant Scientology corporation Church of Scientology International ("CSI") to dismiss the complaint, and a motion by defendant Religious Technology Center ("RTC") to dismiss the complaint.

2. I was inside Scientology for many years, held several key positions such as public relations officer, legal officer, intelligence officer and archivist/researcher, and gained considerable knowledge of organization structure, personnel, policies and practices. I worked closely with Scientology founder L. Ron Hubbard and gained considerable knowledge of his history, activities, writings and intentions. I left Scientology when I discovered and documented organization-wide fraud concerning Hubbard's history, accomplishments, intentions, the promises of Scientology's mental healing "technology" and the organization's nature and activities.

3. Because of what I knew of Scientology and Hubbard fraud and other abuses, immediately after leaving the organization, and continuing to this day, I was designated by Scientology leaders as an "enemy" and became a target of Scientology's policy and practice of attacking "enemies," called, and judicially condemned as, "fair game." Hubbard stated in one description: